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FINANCING OF THE INTERNATIONAL CRIMINAL TRIBUNAL FOR THE PROSECUTION OF PERSONS RESPONSIBLE FOR GENOCIDE AND OTHER SERIOUS VIOLATIONS OF INTERNATIONAL HUMANITARIAN LAW COMMITTED IN THE TERRITORY OF RWANDA AND RWANDAN CITIZENS RESPONSIBLE FOR GENOCIDE AND OTHER SUCH VIOLATIONS COMMITTED IN THE TERRITORY OF NEIGHBOURING STATES BETWEEN 1 JANUARY AND 31 DECEMBER 1994

Ninth report of the Advisory Committee on Administrative and Budgetary Questions

I. INTRODUCTION

1. The Advisory Committee on Administrative and Budgetary Questions has considered the report of the Secretary-General on the financing of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994 (A/C.5/51/29/Add.1). During its consideration of the report, the Advisory Committee met with the Prosecutor and the Registrar of the International Tribunal for Rwanda and with representatives of the Secretary-General.

II. FINANCIAL REQUIREMENTS FOR 1997

2. By its resolution 51/215 of 18 December 1996, the General Assembly decided to appropriate an amount of $20,871,100 net ($23,114,950 gross) for the period from 1 January to 30 June 1997, pending the issuance of the report of the Office of Internal Oversight Services on the audit of the International Criminal Tribunal for Rwanda conducted in response to General Assembly resolution 50/213 C of 7 June 1996. The report of the Office of Internal Oversight Services (A/51/789, annex) was issued on 6 February 1997; and the Advisory

Committee met with the Under-Secretary-General for Internal Oversight Services to exchange views.

3. The Advisory Committee notes from paragraphs 2 and 3 of the note by the Secretary-General transmitting the report of the Office of Internal Oversight Services (A/51/789) that he agreed with the overall findings of the report and that he was committed to closing the gap identified by the Office of Internal Oversight Services and taking all required measures to streamline and strengthen the Secretariat's support to the Tribunal. In immediate follow-up to the interim recommendations of the Office of Internal Oversight Services, additional assistance was being provided to the Tribunal on site and a more consistent pattern of support was being developed to meet its needs.

4. Upon inquiry as to the progress in the implementation of the report of the Office of Internal Oversight Services, the Advisory Committee was provided with information, which is attached as annex I.

5. With regard to the relationship between the Registry and the Chambers, the Advisory Committee notes that the Office of Legal Affairs has, pursuant to the report of the Office of Internal Oversight Services, prepared a legal opinion, on the relationship between the two organs (see annex II).

6. As indicated in paragraph 6 of the report of the Secretary-General, revised resource requirements of the Tribunal for the period from 1 January to 31 December 1997 amount to $41,366,600 net ($46,435,000 gross), reflecting a net increase of $4,871,900 and an additional 56 posts over the 1996 appropriation and authorized staffing level. The Advisory Committee was provided with information on initial and revised estimates for the period from 1 January to 31 December 1997, which is attached as annex III.

7. The Advisory Committee regrets that a performance report in respect of the period from 1 January to 31 December 1996 was not available. This hampered the Advisory Committee's evaluation of the proposals. Upon inquiry, the Advisory Committee was informed that expenditure in 1996 amounted to $24,477,800, compared with the appropriation of $36.5 million net for that year. The estimated expenditure for the period from 1 January to 30 June 1997 amounts to $17.6 million, as compared with an appropriation of $20,871,000 for the same period. The Advisory Committee was also informed that the latter estimate is based on expenditure for the first two months of 1997.

8. Upon inquiry, the Advisory Committee was informed that there was a vacancy factor of 22 per cent for Professional posts and 6 per cent for General Service. The Advisory Committee was also informed that, in document A/C.5/51/29 and Corr.1, the 1997 estimates for 21 new posts were calculated on the basis of 50 per cent of the annual standard salary costs; in document A/C.5/51/29/Add.1, the revised 1997 estimates for 56 new posts were based on 50 per cent of standard salary costs for the last six months of 1997.

9. With regard to the conditions of service for staff, the Advisory Committee was informed that the United Nations Development Programme (UNDP) had decided to implement an administrative arrangement to pay staff entitlements as if Kigali were a "mission" duty station. The Advisory Committee was further informed that

consequent upon the action of UNDP the possibility of giving international staff a choice regarding how they should be compensated, either by the mission treatment or the family duty station, was being considered. In the opinion of the Advisory Committee, leaving for the staff to decide which status to choose is likely to complicate control and proper management of requirements for pay and allowances. It is also the view of the Advisory Committee that the decision of UNDP to change the status of Kigali raises the question of the appropriate procedure to be followed by United Nations agencies in determining the conditions of service of their staff in the same location. In this connection, the Advisory Committee believes that there is a need for a review of the matter and the involvement of the International Civil Service Commission (ICSC).

10. It is the opinion of the Advisory Committee that requests for new posts and other resources should always be fully justified and explained. The Advisory Committee had difficulty in evaluating the requests for resources owing to the lack of justification and analysis of the estimates.

11. The budget submission should include under expenditures the estimated costs of all personnel, including those funded from voluntary contributions in cash or in kind, as well as their related support costs. The submission should also contain an income section reflecting all revenue received.

12. The Advisory Committee is of the view that further improvements could be introduced in the format of the document to enhance its clarity and transparency, without necessarily increasing its length. Furthermore, whenever possible, data, particularly on workload statistics for various units, should be presented in a tabular format, accompanied by qualitative analysis in support of the requests. Whenever possible, the budgets of the International Criminal Tribunal for Rwanda and of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 should be standardized.

The Chambers

13. The Advisory Committee notes from paragraph 14 of the report of the Secretary-General that in 1997 it is planned to hold two plenary sessions, one at Arusha and one at The Hague. In the light of the fact that Arusha is the Seat of the Tribunal, it is the view of the Advisory Committee that the holding of any plenary session at The Hague should be avoided.

14. The salaries and allowances of the six judges of the Tribunal are estimated at $894,400 and common costs of the judges at $19,500 for the education grant requirements of the judges concerned. With regard to the conditions of service of judges, the Advisory Committee recalls that since it was anticipated that the judges would take up residence on 1 June 1996 and since no trials had started, the judges were paid a prorated salary on a "when actually employed basis" (see A/50/923, para. 10). In this connection, the Advisory Committee was informed that the Secretariat authorized the payment of salaries of judges for the period from 26 June 1995 to 19 June 1996, covering the initial period of their appointment but before they took up their posts. The Advisory Committee has serious reservations about the propriety of this action by the Secretariat and

requests the Secretary-General to clarify this matter in the context of his next performance report. Moreover, the Advisory Committee understands that consideration is being given to the payment of a hardship allowance to judges. The Advisory Committee is of the opinion that the conditions of service of the judges are such as to make the payment of such an allowance unnecessary.

15. With regard to travel and subsistence benefits of judges, the Advisory Committee recommends that, as is the case with the International Tribunal for the Former Yugoslavia, regulations be prepared for the Tribunal and submitted to the Advisory Committee for scrutiny.

16. The Secretary-General's proposed staffing table for 1997 for the Tribunal comprises 438 posts (excluding 6 judges), reflecting an increase of 56 posts over the 382 posts established as temporary posts for 1996. The Advisory Committee notes that 12 additional posts are for the Office of the Prosecutor and 44 for the Registry (see A/C.5/51/29/Add.1, para. 10 and table 3). The Advisory Committee was informed that as at 23 May 1997 there was an overall vacancy factor of 11 per cent, comprised of 17 per cent in the Office of the Prosecutor and 9 per cent in the Registry.

Office of the Prosecutor

17. In paragraph 29 of the report of the Secretary-General (A/C.5/51/29/Add.1), the amount of $11,535,600 is provided under staff costs for the continuation of 123 temporary posts authorized in 1996 and 12 new posts. As shown in table 7.B of the report, staffing for the Office of the Prosecutor in 1997 would include 14 extrabudgetary posts, of which 10 are new. The Advisory Committee notes that the Interpretation Service has been transferred from the Office of the Prosecutor to the Registry.

18. The Advisory Committee notes from paragraph 33 of the report that on the basis of six trials annually, it is proposed to constitute four prosecution teams. For this purpose, it is proposed to augment the present posts of the Prosecution Section with five new posts (four P-4 and one P-3). In view of the priority attached to this function and in the light of the fact that the Tribunal has 12 accused in custody, the Advisory Committee has no objection to the additional posts being requested.

19. With regard to the status of investigations, the Advisory Committee was informed that while 12 individuals were in custody and pre-trial investigations were nearly completed, 10 other investigations were well advanced, 10 investigations were partially complete and 8 others had just begun.

20. The Advisory Committee notes from paragraph 27 of the report that the security situation in Rwanda since February 1997 has prevented investigators from undertaking missions outside Kigali. In this connection, the Advisory Committee was informed during its meetings with the Secretariat that a meeting was taking place at Dar es Salaam to chart out an appropriate strategy.

21. With regard to gratis personnel, the Advisory Committee notes from paragraph 28 of the report that the Office of the Prosecutor plans to continue to utilize the services of gratis personnel in its investigative/analytical

functions until such secondment arrangements are terminated with the Governments concerned. The Advisory Committee also notes that as of 1 April 1997, there were 33 gratis personnel in the Office of the Prosecutor.

22. The Advisory Committee notes from paragraphs 35 and 36 of the report that the Investigation Section comprises nine multidisciplinary investigative teams and would consist of 95 posts (1 D-1, 3 P-5, 22 P-4, 32 P-3, 31 P-2 and 6 General Service). The Advisory Committee also notes that the 95 posts include proposals for 4 new posts (1 P-4, 1 P-3 and 2 P-2) for the Witnesses and Victims Liaison Unit. This section would also be supported by 13 (12 P-3 and 1 P-2) posts for investigators and forensic experts funded from the Voluntary Fund, as well as 31 investigator/analysts provided as gratis personnel. Bearing in mind the vacancy situation, the Advisory Committee recommends that the need for these posts should be met through redeployment. If necessary, these posts can be requested again in the budget submission for 1998.

23. As indicated in table 9 of the report of the Secretary-General, a total of 70 security posts are requested under the Registry, showing an increase of 11 posts over the 1996 appropriation. In addition, 42 security posts are to be funded from temporary assistance (see A/C.5/51/29/Add.1, para. 63). The Advisory Committee notes that these requests are being made pending a full review of the recommendations of the recent security assessment of the Tribunal. The Advisory Committee also notes that the budget contains virtually no information on how the number of security posts being requested were arrived at. While the Advisory Committee recognizes the importance of providing for adequate security, it is of the view that resources must be justified. Pending this justification, the Advisory Committee recommends approval of the 11 new security posts but not the additional temporary assistance until the security assessment has been completed.

24. With regard to the Legal Advisory Group, the Advisory Committee notes that this will consist of three new posts (one P-5, one P-3 and one General Service) to be established in Kigali, two existing posts (one P-4 and one P-3) currently based at The Hague as part of the former Legal Services Section and one post in Kigali to be financed from the Voluntary Fund. The Advisory Committee also notes that the functions of the Legal Advisory Group would be to provide back-up to the investigation and prosecution work of the Tribunal in all matters of criminal and international law and to provide advice to the Prosecutor. The Advisory Committee recommends acceptance of the three new posts.

25. With regard to information and evidence support, the Advisory Committee notes from paragraph 38 of the report that in view of the security situation in Kigali, all original documents and evidence were being transferred to The Hague for safe keeping. The Advisory Committee recalls that resources for staff, rental and security of temporary premises in The Hague would not be required, as the documents processing centre was being transferred from Washington, D.C., to Arusha directly. The Advisory Committee was informed that contrary to what was reported in paragraphs 15 and 26 of its report (A/50/923), the centre was transferred to Kigali and not Arusha. The Advisory Committee was also informed that the processing centre was found unsuitable, and the equipment and software were now in storage in Kigali and that a new design was under development at The Hague. The Advisory Committee is seriously concerned at the way resources for

this activity are being handled, as it shows lack of proper planning. No convincing reason has been given to the Advisory Committee as to why the processing centre cannot be established at Arusha.

26. In paragraph 39 of the report of the Secretary-General (A/C.5/51/29/Add.1), the amount of $100,000 is requested to provide for testimony by expert witnesses. In view of the upcoming trials, the Advisory Committee has no objection to this request.

27. In paragraph 40 of the report, resources estimated at $750,000 are requested to provide for travel within Rwanda, to neighbouring countries and to Europe, North America and the Middle East. The Advisory Committee notes that owing to restrictions on investigative work within Rwanda, the Prosecutor intends to intensify its investigation outside Rwanda. Upon inquiry, the Advisory Committee was informed that this estimate is based on 110 trips (72 outside Rwanda and 38 within Rwanda).

28. In the opinion of the Advisory Committee, the amount requested for travel of investigators within Rwanda appears to be high, especially given the situation in the area. Accordingly, the estimate for travel of investigators should be reduced from $750,000 to $600,000. Future budgetary submissions should contain detailed, justified proposals for travel.

The Registry

29. The Advisory Committee notes from paragraph 52 of the report that the Victims and Witnesses Support Section, which was established in mid-1996 from resources of the Voluntary Fund, would be strengthened by improving the administrative, logistical and physical protection support to be provided. For this purpose, the Tribunal is going to issue a policy and operational manual so as to clearly set the guidelines on the operation of the programme. The Tribunal is also requesting five new posts under the assessed budget (one P-4, one P-3 and three General Service), to be augmented by six posts under the Voluntary Fund (two P-3, two P-2 and two Local level). The Advisory Committee recommends acceptance of the additional five posts.

30. With regard to the policy and operational manual to govern the Victims and Witnesses Support Section, the Advisory Committee requests that it be issued without delay. The Advisory Committee also requests that the experience of the International Tribunal for the Former Yugoslavia in this regard be explored.

31. The Advisory Committee notes from paragraph 58 of the report that Language and Conference Services, which was partly in the Office of the Prosecutor, Kigali, and partly in the Registry in Arusha, has now been consolidated into a single support service under the Registry through a transfer of 39 language posts from the Office of the Prosecutor. The Advisory Committee also notes that in view of the increased responsibilities, it is proposed to upgrade the position of the Chief of Service from the P-4 to the P-5 level, as well as to reclassify four P-2 posts to the P-3 level and to downgrade two P-4 posts to the P-3 level. In addition, 17 new posts for Local level interpreters are being requested to accompany the investigators on field work in Kigali. With regard to the reclassification of posts, the Advisory Committee recommends acceptance

of the reclassification. In connection with the request for 17 Local level interpreters, the Advisory Committee understands that the security situation outside Kigali does not permit investigations to be carried out. The Advisory Committee therefore recommends that consideration of these posts be deferred to the budget for 1998.

32. In connection with travel of the Registrar (see A/C.5/51/29/Add.1, para. 64 (a)), the Advisory Committee notes that the requested provision of $200,000 has not been explained. It is the view of the Advisory Committee that all travel requirements need to be substantiated and explained. The Advisory Committee requests that detailed explanation of travel requirements be provided to it in the context of the next performance report.

33. Paragraph 64 (c) of the report provides for travel of witnesses ($300,000). The Advisory Committee notes that this estimate is based on six trials in 1997 and 240 witnesses. Upon inquiry, the Advisory Committee was informed that three trials were in progress and two trials were to start in the summer. In view of the fact that the Tribunal is unlikely to hold six trials in 1997, the Advisory Committee believes that this estimate is inflated. Accordingly, the Advisory Committee recommends that this estimate be reduced by $30,000 to $270,000.

34. The Advisory Committee recalled that guidelines were being developed for the reimbursements of lost earning of witnesses who testified before the International Tribunal for the Former Yugoslavia (see A/51/7/Add.7, para. 35). In this connection, the Advisory Committee recommends that now that trials have started, guidelines regarding lost income of witnesses should be prepared for the International Criminal Tribunal for Rwanda.

35. In paragraph 65 of the report of the Secretary-General, the amount of $1,395,000 is requested for defence counsel. The Advisory Committee notes that this estimate is based on six trials and two defence counsels. Upon inquiry, the Advisory Committee was informed that three trials were under way and that it was estimated that two more trials would begin during the summer. The Advisory Committee believes that the Tribunal will not be able to undertake six trials in 1997. Hence, it is the view of the Advisory Committee that the amount of $1,395,500 under defence counsel can be reduced to $1.2 million.

36. Resources in the amount of $300,000 are requested for travel of defence counsel (A/C.5/51/29/Add.1, para. 64 (b)). The Advisory Committee notes that this estimate is based on six trials to be held in 1997. In the opinion of the Advisory Committee the amount requested for travel of defence counsel is inflated, especially given the situation in Rwanda. Accordingly, and taking into account paragraph 35 above, the estimate for travel of defence counsel should be reduced from $300,000 to $270,000.

37. With regard to the construction of the second courtroom, the Advisory Committee notes from paragraph 36 of the report of the Office of Internal Oversight Services (A/51/789, annex) that the mismanagement of the project was the fault both of personnel at the Tribunal and Headquarters. This is regrettable. The Advisory Committee notes that there is no information on the construction of the courtroom in the report of the Secretary-General. The Advisory Committee was informed that the original project had been discontinued

and that new designs were being prepared. The Advisory Committee was further informed that after completion of the new designs, requests for proposals would be issued and a new construction contract signed. The Advisory Committee was also informed that no definitive completion date could be given and that a temporary courtroom was being constructed in the present building. The Advisory Committee believes that as the Tribunal has 12 accused in custody, it is essential to complete the construction of the second courtroom as soon as possible. In the meantime, the Advisory Committee agrees with the construction of a temporary courtroom in the present building.

38. In connection with long-term requirements of the Tribunal's work, the Advisory Committee requests information on arrangements for carrying out sentences and for protecting witnesses, including arrangements made with Governments (see A/51/7/Add.7, para. 36).

39. Resources in the amount of $786,000 are being requested for communications (A/C.5/51/29/Add.1, para. 68). In this connection, the Advisory Committee is seriously concerned about the apparent lack of electronic data-processing and communications capacity for the Court. For example, the Advisory Committee was informed that Arusha still had no e-mail facilities and had to rely on fax and telephone as a means of communicating with Headquarters. In the opinion of the Advisory Committee, this situation needs to be addressed on an urgent basis.

III. CONCLUSIONS

40. Taking into account its comments in paragraphs 22, 28, 31, 33, 35 and 36 above, the Advisory Committee recommends that the General Assembly approve an additional appropriation of $23,274,250 gross ($19,823,600 net) bringing the total appropriation for 1997 to $46,389,200 gross ($40,694,700 net) for the maintenance of the International Tribunal for Rwanda for 1997.

ANNEX I

International Criminal Tribunal for Rwanda

Note by the Registrar of the International Criminal Tribunal for Rwanda dated 14 May 1997 on the implementation of the recommendations of the Office of Internal Oversight Services, as requested by the Advisory Committee on Administrative and Budgetary Questions

1. Action has been taken or initiated to implement all of the pertinent recommendations of the Office of Internal Oversight Services as contained in its report to the fifty-first session of the General Assembly (A/51/789, annex). The following is an indicative summary of these actions in the two key areas of the Registry's operations: Administrative Service and Judicial and Legal Service.

A. Administrative Service

2. Action has been initiated to revamp and streamline the Administrative Service through, inter alia, appointment of key supervisory staff and establishment of clear operational procedures and reporting channels. The following key supervisory staff are now in place: Chief of Administration, Chief of Finance and Chief of the Administrative Unit, Kigali, who is currently serving as Acting Chief of Personnel at Arusha pending completion of recruitment action on the latter post in the next few weeks. In addition, the Deputy Registrar has been appointed and will take up his duties of supervising the Judicial and Legal Services Division shortly (see sect. B below).

Staffing issues

3. Most of the problems identified by the Office of Internal Oversight Services in this area will be largely resolved through the ongoing exercise of establishing and enforcing observance of clear, transparent and well-delineated personnel procedures incorporating the requisite criteria. Such criteria would, for example, in the case of recruitment, include qualifications, language abilities and seniority, all considered against the background of ensuring equitable geographical distribution and gender balance. Additionally, in this context, action is under way to establish the requisite statutory machinery, such as appointment and promotion committees, which will help to ensure fairness and transparency in personnel matters. Also under way, in response to widespread allegations of recruitment of unqualified staff in the past, is a full-scale review of the profile of each and every internationally recruited staff member against the job description of the post encumbered.

4. Discussions have, at the same time, been initiated with the appropriate authorities at United Nations Headquarters, as recommended by the Office of Internal Oversight Services, on ways to improve conditions of service of the Tribunal in order to be able to attract and retain staff of a high calibre.

Finance

5. Action here has concentrated on bringing the financial records and accounts up to date. This is being steadily accomplished, with the books now up to date up to March 1997. The same process of establishing clear procedures is also under way in this area. In particular, a system of expenditure control through periodic allotments by budget lines is being introduced which will incorporate clear lines of authority, responsibility and accountability.

Procurement

6. As noted by the Office of Internal Oversight Services, a main problem here has been the failure to follow proper procurement procedures, resulting in such undesirable practices as ex post facto approval of contracts and sole source purchasing. A leading cause of these problems, identified by the Office of Internal Oversight Services, is ignorance on the part of concerned staff, especially those recruited from outside the United Nations system, of United Nations rules and regulations. Action has been initiated to deal with this situation, with specific assistance requested from United Nations Headquarters to enable the Tribunal to revamp its entire contracts and procurement operation.

Construction project

7. With the assistance of Headquarters, the project for the renovation of the premises of the Tribunal, including construction of a second courtroom, has been put back on track. New architects have been hired and the plans revised and approved. The final construction drawing is expected in the next few weeks, followed by the selection of the contractor through the normal bidding process and commencement of actual construction by September, with completion of work expected by year's end. Efforts are being made, in parallel, to adapt some already secured space into a temporary second courtroom to be used in the meantime.

Kigali office

8. The three main problems identified by the Office of Internal Oversight Services are being addressed: (a) weaknesses in the Administrative Unit, (b) the problem of gratis personnel (secondees) and (c) security.

9. On (a), the Unit is being reorganized and strengthened, a new chief has been appointed and a clear delegation of authority will be made to ensure effective and efficient day-to-day operation.

10. On (b), efforts are under way, in consultation with the Prosecutor, to whose Office most of the secondees are assigned, and the concerned donor Governments to "regularize" the situation of the secondees, inter alia, by clarifying their status and bringing them under an appropriate United Nations regime, in terms especially of observance of staff rules and regulations applicable to United Nations-associated personnel. It is also expected that the number of these gratis personnel will steadily diminish as they are replaced by regular United Nations staff.

11. On (c), action has been initiated to enhance security for Tribunal personnel in Kigali along the lines recommended by a security assessment mission dispatched from Headquarters in March this year. These actions include the recruitment of additional security officers and closer supervision of the locally contracted security services.

B. Judicial and legal service

12. The main difficulty with respect to the legal and judicial support functions of the Registry is the inadequacy of resources to sustain effective and efficient service to the Chambers of the Tribunal. The reference here is to the legal staff required not only to cover the court sittings and court management functions but to provide sufficient legal research capability to facilitate the work of the judges, including in the writing of opinions and decisions. Furthermore, there remains a whole range of functions pertaining to the Registry other than direct support to the court proceedings that demand legal expertise. These include support to defence counsel, oversight of the detention facilities, operating the witnesses and victims support programme as well as undertaking general legal functions related to agreements with Member States and support to contractual and procurement transactions by the Administration.

13. Currently, the Registry is doing its level best to meet these responsibilities with existing staff, but it is impossible not to worry about the situation that will soon arise when, as indicated above, the second courtroom becomes available, thus enabling both Chambers of the Tribunal to operate simultaneously, trying cases in parallel. This will certainly stretch the existing legal staff to the limit.

14. Among the positive developments that have taken place in recent weeks and which augur well for the work of this unit are: the appointment and imminent entry on duty of the Deputy Registrar, establishment of an effective and well-received arrangement for providing support to defence counsel, promising results from efforts under way to obtain the services of additional court stenographers in order to speed up production of transcripts of court proceedings and adoption of measures designed to strengthen the witnesses and victims support programme, inter alia, through augmenting the resources of the unit, broadening the expertise available to it, and streamlining its operational procedures for greater flexibility and responsiveness.

C. Relations between the three main organs: the Chambers, the Office of the Prosecutor and the Registry

15. The report of the Office of Internal Oversight Services highlighted the issue of poor working relations between the heads of the three main organs of the Tribunal, and particularly the open conflict that appeared to exist between the Registrar on the one side and the President and judges of the Chambers on the other.

16. The situation can definitely be said to have improved markedly with the entry on duty of the new Registrar. Every effort has been made by all parties to establish a new cordial and cooperative working relationship based on mutual respect for each other's statutory functions and mandate. Regular consultative meetings are now being held by the Registrar with the President and Bureau of the Chambers, as well as with the entire body of judges, at which issues arising in the work of the Tribunal are discussed and any problems resolved. The judges have repeatedly expressed to the Registrar their satisfaction and gratification at the relationship now existing between them and the Registry. There is every reason to believe that this situation will continue into the future.

17. Finally, an important ingredient in clarifying and stabilizing the relationship between the Registry and the Chambers is the legal opinion provided by the Office of Legal Affairs, pursuant to the report of the Office of Internal Oversight Services, delineating the proper functions and responsibilities of each. The opinion, in essence, reaffirms the common-sense understanding of the functional structure established by the Statute of the Tribunal, i.e., the judges' role is to try cases, the Prosecutor to prosecute them and the Registrar to administer the Tribunal in accordance with United Nations rules and regulations and in support of the work of the Chambers and the Prosecutor. As requested by the Advisory Committee on Administrative and Budgetary Questions, a copy of the opinion of the Office of Legal Affairs is attached herewith for reference.

Agwu U. OKALI
Registrar
International Criminal Tribunal
for Rwanda

ANNEX II

Note dated 29 April 1997 by the Office of Legal Affairs on the respective roles of the judges and the Registrar of the International Criminal Tribunal for Rwanda

1. Pursuant to the report of the Office of Internal Oversight Services, the Office of Legal Affairs was requested to prepare guidelines on the respective roles of the judges and the Registrar of the International Criminal Tribunal for Rwanda. Although, in principle, there should be little room for confusion, this Office has nevertheless set out below the principal functions of the judges and the Registrar as provided for in the statute and the rules of procedure and evidence, and underscored the areas of interaction between them.

2. The International Criminal Tribunal for Rwanda consists of three separate organs: the Chambers, comprising two Trial Chambers and an Appeals Chamber, the Prosecutor and the Registry. Elected by the General Assembly, the Judges are charged with the judicial function of the Tribunal. The Prosecutor, appointed by the Security Council upon nomination of the Secretary-General, is responsible for the investigations and the prosecutions before the Trial Chambers and the Appeals Chamber. The Prosecutor acts independently as a separate organ of the Tribunal, and is not to seek or receive instructions from any Government or from any other source (art. 15, para. 2, of the Statute of the Tribunal). The Registrar is appointed by the Secretary-General and is answerable to him under the United Nations Staff Regulations and Rules. In the administration of the Tribunal, however, he acts in the service of the Chambers and the Prosecutor, and is ultimately responsible for the Office of the Registry. He has a general responsibility to ascertain that the rules of the Organization are applied by the staff of the Tribunal, which is a subsidiary organ of the Security Council.

A. The role of the judges

3. The Statute of the International Criminal Tribunal for Rwanda, like that of the International Tribunal for the Former Yugoslavia, does not spell out in detail the judicial functions of the judges. The report of the Secretary-General on the statute of the International Tribunal for the Former Yugoslavia provides in general terms that the function of the judicial organ is to hear the cases presented to its Trial Chambers and consider appeals from the Trial Chambers in its Appeals Chamber (S/25704, para. 69).

4. The rules of procedure and evidence, which establish in detail the organization of the Tribunal, the functions of the respective organs and the stages of the legal process, contain a short description of the functions of the judges and the President.

5. Accordingly, rule 24 of the rules of procedure and evidence of the International Criminal Tribunal for Rwanda provides that judges shall meet in plenary meeting to:

(a) Elect the President and Vice-President;

(b) Adopt and amend the rules;

(c) Adopt the annual report provided for in article 32 of the statute;

(d) Decide upon matters relating to the internal functioning of the Chambers and the Tribunal;

(e) Determine or supervise the conditions of detention;

(f) Exercise any other functions provided for in the statute or in the rules.

6. Rule 19 of the rules of procedure and evidence provides that:

> "The President shall preside at all plenary meetings of the Tribunal; he shall coordinate the work of the Chambers and supervise the activities of the Registry as well as exercise all the other functions conferred on him by the Statute and the Rules" (emphasis added).

Such other functions include, inter alia, notifying the Security Council of a refusal of a State to cooperate with the Tribunal (rule 61 of the rules of procedure and evidence), and deciding upon pardon and commutation (art. 27 of the statute; rule 125 of the rules of procedure and evidence).

B. The role of the Registrar

7. Article 16 of the Statute of the Rwanda Tribunal provides that the Registry shall be responsible for the administration and servicing of the International Tribunal for Rwanda.

8. The responsibilities of the Registrar are elaborated in paragraph 90 of the report of the Secretary-General on the International Tribunal for the Former Yugoslavia (S/25704). They include public information and external relations; preparation of minutes of meetings; conference-service facilities; printing and publication of all documents; all administrative work, budgetary and personnel matters; and serving as the channel of communications to and from the International Tribunal.

9. Rule 33 of the rules of procedure and evidence of the International Criminal Tribunal for Rwanda sets out the functions of the Registrar as follows (an identical provision is contained in rule 33 of the rules of procedure and evidence of the International Tribunal for the Former Yugoslavia):

> "The Registrar shall assist the Chambers, the plenary meetings of the Tribunal, the judges and the Prosecutor in the performance of their functions. Under the authority of the President, he shall be responsible for the administration and servicing of the Tribunal and shall serve as its channel of communication" (emphasis added).

10. The rules of procedure and evidence confer upon the Registrar specific functions, such as authority over the Victims and Witnesses Unit (rule 34),

taking minutes of the plenary meetings of the Tribunal and of the sittings of the Chambers (rule 35), keeping a record book (rule 36), keeping records of all proceedings and physical evidence (rule 81), establishing a list of counsel and assigning them to indigent suspects or accused (rule 45).

11. A fully elaborated description of the functions of the Registry can be found in the Directive for the Registry (in particular the part dealing with the Judicial Department, Court Management and Support Services), prepared by the Registry of the International Tribunal for the Former Yugoslavia and approved by the judges of that Tribunal. The Directive regulates the activities of the Registry and its contacts with the Chambers and the parties in proceedings before the Tribunal, and represents the understanding of both the judges and the Registrar of their respective roles.

12. In the view of this Office, the Directive presently applicable in the International Tribunal for the Former Yugoslavia should guide the work of the Registry of the International Criminal Tribunal for Rwanda pending the preparation of a similar Directive by the judges and the Registry. A clear and mutually agreed-upon delineation of roles and functions would avoid conflicting interpretation of the statute and the rules of procedure and evidence with regard to the respective authorities and responsibilities of both organs.

C. Joint functions or areas of interaction

13. The practice of the International Criminal Tribunal for Rwanda revealed that conflicting views had arisen, not so much in areas of responsibility which were clearly distinguished, but in the interaction between the judges and the Registry. The key to the delimitation of the respective roles of both organs lies in the bona fide interpretation of rules 19 and 33 of the rules of procedure and evidence and in the understanding of the scope of the authority of the President and his supervisory role over activities of the Registry.

14. In the view of this Office, the supervisory role of the President should be understood in a general sense of oversight, rather than direct authority or responsibility, in the practice of the International Tribunal for the Former Yugoslavia, the relationship between the judges and the Registrar are essentially one of cooperation, consultation and guidance by the President, but not "supervision" in any hierarchical sense. Within this meaning, the President's authority or supervision should extend to the functions of the Registry in the service of the Chambers (i.e. schedules of hearings, assignment of defence counsel and the functioning of the Victims and Witnesses Unit and Detention Unit). The President may not, however, exercise a supervisory role in respect of the Registry's functions performed in the service of the Prosecutor or in the administration of the Registry itself. Similarly, in all matters relating to staff, premises, equipment, procurement and payment, the Registrar is solely responsible for the proper application of the Staff Regulations and Rules and Financial Regulations and Rules of the United Nations. It goes, however, without saying that the Registrar would consult with the judges in matters that concern staff who work directly for them, such as the appointment of legal officers serving the Chambers and legal assistants working with the judges, or in other matters that are of direct concern to the judges.

15. The foregoing does not constitute an exhaustive list of functions which both the judges and the Registrar may be called upon to perform in their daily work. No pre-determined formula could be established to avoid conflicts in borderline cases, and much would depend on the spirit of cooperation demonstrated by those concerned. The distinction outlined in paragraph 2 should serve as guidance in this respect.

(Signed) Hans CORELL

ANNEX III

Comparison of initial and revised estimates for the International Criminal Tribunal for Rwanda for the period from 1 January to 31 December 1997 by object of expenditure

Object of expenditure	The Chambers		Office of the Prosecutor		The Registry (Programme support)		Total	
	Initial	Revised	Initial	Revised	Initial	Revised	Initial	Revised
Salaries, allowances and common costs of judges	913.9	913.9	0.0	0.0	0.0	0.0	913.9	913.9
Temporary posts	1 122.7	990.7	13 690.1	11 535.6	18 035.9	17 113.0	32 848.7	29 639.3
Other staff costs					4 494.7	2 063.0	4 494.7	2 063.0
General temporary assistance	0.0	0.0	0.0	0.0	4 422.7	2 013.0	4 422.7	2 013.0
Overtime, night differential, compensatory time	0.0	0.0	0.0	0.0	0.0	50.0	0.0	50.0
Temporary assistance for meetings	0.0	0.0	0.0	0.0	72.0	0.0	72.0	0.0
Consultants	0.0	0.0	132.0	150.0	0.0	0.0	132.0	150.0
Travel	255.5	166.4	750.0	750.0	600.0	800.0	1 605.5	1 716.4
Contractual services					3 883.2	1 724.6	3 883.2	1 724.6
External printing	0.0	0.0	0.0	0.0	2.5	30.0	2.5	30.0
Contractual security services	0.0	0.0	0.0	0.0	281.0	299.6	281.0	299.6
Defence counsel	0.0	0.0	0.0	0.0	3 599.7	1 395.0	3 599.7	1 395.0
Hospitality	0.0	0.0	0.0	0.0	2.9	5.0	2.9	5.0
General operating expenses					1 753.7	2 427.9	1 753.7	2 427.9
Rental of premises	0.0	0.0	0.0	0.0	665.4	711.3	665.4	711.3
Maintenance of premises	0.0	0.0	0.0	0.0	124.0	124.0	124.0	124.0
Utilities	0.0	0.0	0.0	0.0	292.0	285.7	292.0	285.7
Miscellaneous services	0.0	0.0	0.0	0.0	207.4	320.9	207.4	320.9
Communications	0.0	0.0	0.0	0.0	264.1	786.0	264.1	786.0
Maintenance and repair of vehicles	0.0	0.0	0.0	0.0	200.8	200.0	200.8	200.0
Supplies and materials	0.0	0.0	0.0	0.0	636.9	955.6	636.9	955.6
Furniture	0.0	0.0	0.0	0.0	50.0	50.0	50.0	50.0
Equipment	0.0	0.0	0.0	0.0	411.2	1 720.9	411.2	1 720.9
Total	2 292.1	2 070.9	14 572.1	12 435.6	29 868.5	26 860.0	46 732.7	41 366.6